

### § 124. Advances to States

If the Secretary shall determine that it is necessary for the expeditious completion of projects on any of the Federal-aid systems, including the Interstate System, he may advance to any State out of any existing appropriations the Federal share of the cost of construction thereof to enable the State transportation department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special revolving trust fund, by the State official authorized under the laws of the State to receive Federal-aid highway funds, to be disbursed solely upon vouchers approved by the State transportation department for rights-of-way which have been or are being acquired, and for construction which has been actually performed and approved by the Secretary pursuant to this chapter. Upon determination by the Secretary that any part of the funds advanced to any State under the provisions of this section are no longer required, the amount of the advance, which is determined to be in excess of current requirements of the State, shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced. Any sum advanced and not repaid on demand shall be deducted from sums due the State for the Federal pro rata share of the cost of construction of Federal-aid projects.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 95-599, title I, §118, Nov. 6, 1978, 92 Stat. 2699; Pub. L. 105-178, title I, §§1212(a)(2)(A)(i), 1226(c), June 9, 1998, 112 Stat. 193; Pub. L. 105-206, title IX, §9003(a), July 22, 1998, 112 Stat. 837.)

#### AMENDMENTS

1998—Pub. L. 105-178, §1226(c), as added by Pub. L. 105-206, §9003(a), struck out subsec. (a) designation before “If the Secretary” and struck out subsec. (b), which had: authorized advance of 100 per centum of cost of construction where Secretary determined that toll bridge, toll tunnel, or approach thereto meeting section 129 requirements was necessary to complete essential gap in Interstate System; provided repayment schedule; and directed that advance be made from funds apportioned to State for Interstate System and that section 103(e)(4) provisions would not apply.

Pub. L. 105-178, §1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department” in two places.

1978—Pub. L. 95-599 designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105-206 to be treated as not enacted, see section 9016 of Pub. L. 105-206, set out as a note under section 101 of this title.

#### ACCELERATION OF PROJECTS

Pub. L. 94-280, title I, §141, May 5, 1976, 90 Stat. 444, as amended by Pub. L. 95-599, title I, §136, Nov. 6, 1978, 92 Stat. 2709, provided that: “Not later than six months after the completion of such project, the Secretary of Transportation shall submit a report to Congress which includes, but is not limited to, a description of the

methods used to reduce the time necessary for the completion of such project, recommendations for applying such methods to other highway projects, and any changes which may be necessary to existing law to permit further reductions in the time necessary to complete highway projects.”

### § 125. Emergency relief

(a) GENERAL ELIGIBILITY.—Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of—

(1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or

(2) catastrophic failure from any external cause.

(b) RESTRICTION ON ELIGIBILITY.—In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.

(c) FUNDING.—Subject to the following limitations, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

(1) Not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out the provisions of this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.

(2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.

(d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways in accordance with the provisions of this chapter: *Provided*, That (1) obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (e) of this section, resulting from a single natural disaster or a single catastrophic failure in a State shall not exceed \$100,000,000, and (2) the total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000. Notwithstanding any pro-

vision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on Federal-aid highways. Except as to highways, roads, and trails mentioned in subsection (e) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the State transportation department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) concurrence of the Secretary is not required.

(e) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are Federal-aid highways.

(f) TREATMENT OF TERRITORIES.—For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 86-342, title I, §107(a), Sept. 21, 1959, 73 Stat. 612; Pub. L. 89-574, §9(b), (c), Sept. 13, 1966, 80 Stat. 769; Pub. L. 90-495, §27(a), Aug. 23, 1968, 82 Stat. 829; Pub. L. 91-605, title I, §109(a), Dec. 31, 1970, 84 Stat. 1718; Pub. L. 92-361, Aug. 3, 1972, 86 Stat. 503; Pub. L. 94-280, title I, §119, May 5, 1976, 90 Stat. 437; Pub. L. 95-599, title I, §119, Nov. 6, 1978, 92 Stat. 2700; Pub. L. 96-106, §19, Nov. 9, 1979, 93 Stat. 799; Pub. L. 97-424, title I, §153(a), (c), (d), (h), Jan. 6, 1983, 96 Stat. 2132, 2133; Pub. L. 99-190, §101(e) [title III, §334], Dec. 19, 1985, 99 Stat. 1267, 1290; Pub. L. 99-272, title IV, §4103, Apr. 7, 1986, 100 Stat. 114; Pub. L. 100-17, title I, §§118(a)(1), (b)(1), (2), 133(b)(9), Apr. 2, 1987, 101 Stat. 156, 171; Pub. L. 100-707, §109(k), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 102-240, title I, §1022(b), Dec. 18, 1991, 105 Stat. 1951; Pub. L. 102-302, §101, June 22, 1992, 106 Stat. 252; Pub. L. 105-178, title I, §§1113(b), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 151, 193.)

#### REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-178, §1113(b)(2), added subsec. (a) and struck out former subsec. (a) which authorized expenditures by Secretary from emergency fund for repair or reconstruction of highways, roads, or

trails which have suffered serious damage from natural disasters or catastrophic failures from external sources, including provisions relating to restrictions on eligibility and funding.

Subsecs. (b), (c). Pub. L. 105-178, §1113(b)(1), (2), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively.

Subsec. (d). Pub. L. 105-178, §1212(a)(2)(A)(i), substituted "State transportation department" for "State highway department".

Pub. L. 105-178, §1113(b)(3), substituted "reconstruction of highways on Federal-aid highways in accordance" for "reconstruction of highways on the Federal-aid highway systems, including the Interstate System, in accordance" in first sentence, "subsection (e) of this section" for "subsection (c) of this section" in two places, "authorized on Federal-aid highways" for "authorized on the Federal-aid highway systems, including the Interstate System" before period at end of second sentence, and "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)" for "Disaster Relief and Emergency Assistance Act (Public Law 93-288)" in third sentence.

Pub. L. 105-178, §1113(b)(1), redesignated subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 105-178, §1113(b)(4), substituted "Federal-aid highways" for "on any of the Federal-aid highway systems" before period at end.

Pub. L. 105-178, §1113(b)(1), redesignated subsec. (c) as (e).

Subsec. (f). Pub. L. 105-178, §1113(b)(1), redesignated subsec. (d) as (f).

1992—Subsec. (b). Pub. L. 102-302, which directed the substitution of "on Federal-aid highways" for "on the Federal-aid highway systems including the Interstate System" in two places, could not be executed because phrase "on the Federal-aid highway systems including the Interstate System" did not appear in text.

1991—Subsec. (b)(2). Pub. L. 102-240 substituted "\$20,000,000" for "\$5,000,000".

1988—Subsec. (b). Pub. L. 100-707 substituted "and Emergency Assistance Act" for "Act of 1974".

1987—Subsec. (b). Pub. L. 100-17, §133(b)(9)(A), substituted "the Federal-aid highway systems, including the Interstate System" for "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors" in two places.

Pub. L. 100-17, §118(a)(1), substituted "in a State shall not exceed \$100,000,000." for "shall not exceed \$30,000,000 (\$55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985) in any State."

Pub. L. 100-17, §118(b)(2), designated existing provisions related to limitations placed upon obligations for projects under this section as cl. (1) and added cl. (2).

Subsec. (c). Pub. L. 100-17, §133(b)(9)(B), substituted "on any of the Federal-aid highway systems" for "routes functionally classified as arterials or major collectors".

Subsec. (d). Pub. L. 100-17, §118(b)(1), added subsec. (d).

1986—Subsec. (b). Pub. L. 99-272 inserted parenthetical provision allowing obligations not exceeding \$55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985.

1985—Pub. L. 99-190 amended section in manner substantially identical to amendment by Pub. L. 99-272.

1983—Subsec. (a). Pub. L. 97-424, §153(a)(1), inserted "(1)" before "the repair or reconstruction of highways", and substituted "Secretary" for "he" before "shall find have suffered"; (A) and (B) for (1) and (2), respectively; "In no event shall funds be used pursuant to this section for the" for "and (2)"; and "or responsible local official" for "after December 31, 1967, and prior to December 31, 1970,".

Pub. L. 97-424, §153(a)(2), inserted "from the Highway Trust Fund" after "appropriated".

Pub. L. 97-424, §153(c), inserted "and not more than \$100,000,000 is authorized to be expended in any one fiscal year commencing after September 30, 1980," after "after September 30, 1976,".

Subsec. (b). Pub. L. 97-424, §153(d), inserted proviso establishing a \$30,000,000 limit for obligations relating to a single natural disaster in any one State.

Pub. L. 97-424, §153(h)(1), substituted “the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors,” for “the Federal-aid highway systems, including the Interstate System”, wherever appearing.

Subsec. (c). Pub. L. 97-424, §153(h)(2), substituted “routes functionally classified as arterials or major collectors” for “on any of the Federal-aid highway systems”.

1979—Subsec. (b). Pub. L. 96-106 inserted provision that notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on the Federal-aid highway systems, including the Interstate System.

1978—Subsec. (a). Pub. L. 95-599 inserted “prior to the fiscal year ending September 30, 1978” after “such years, and (2)”, and inserted provision authorizing appropriations of 100 percent of expenditures out of the Highway Trust Fund.

1976—Subsec. (a). Pub. L. 94-280, §119(a)(1)–(3), inserted “, and ending before June 1, 1976,” after “June 30, 1972,”, authorized expenditure of not more than \$25,000,000 for the three-month period beginning July 1, 1976, and ending September 30, 1976, and not more than \$100,000,000 in any one fiscal year commencing after September 30, 1976, and inserted provision that for the purposes of this section the period beginning July 1, 1976, and ending September 30, 1976, shall be deemed to be a part of the fiscal year ending September 30, 1977.

Subsec. (b). Pub. L. 94-280, §119(b), excepted from the requirement of a concurrence by the Secretary an emergency declared by the President to be a major disaster for purposes of the Disaster Relief Act of 1974.

1972—Subsec. (a). Pub. L. 92-361 substituted provisions setting forth maximum expendable amounts for fiscal years ending July 1, 1972 and for fiscal years commencing after June 30, 1972 and an additional amount for fiscal year ending June 30, 1973 for provisions setting forth maximum expendable amount for any fiscal year.

1970—Subsec. (a). Pub. L. 91-605 provided emergency relief for the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State after December 31, 1967, and prior to December 31, 1970, because of imminent danger of collapse due to structural deficiencies or physical deterioration.

1968—Subsec. (a). Pub. L. 90-495 permitted the use of the emergency fund for repair or construction caused by other than natural catastrophes.

1966—Subsec. (a). Pub. L. 89-574, §9(c), raised from \$30,000,000 to \$50,000,000 the upper limit on allowable annual appropriations to establish and replenish the fund, provided that, if, in any fiscal year the total of all expenditures under this section is less than \$50,000,000, the unexpended balance of such amount shall remain available for expenditure during the next two succeeding fiscal years in addition to amount otherwise available, and provided that 60 per centum of the expenditures under this section are authorized to be appropriated from the Highway Trust Fund and the remaining 40 per centum of such expenditures are authorized to be appropriated only from any monies in the Treasury not otherwise appropriated.

Subsec. (c). Pub. L. 89-574, §9(b), added parkways, public lands highways, public lands development roads, and trails to the list of types of roads the repair or reconstruction of which may be paid for out of the emergency fund.

1959—Pub. L. 86-342, among other changes, made expenditures from the emergency fund subject to the provisions of section 120 of this title, and permitted the Secretary to expend funds from the emergency fund, either independently or in cooperation with any other branch of the Government, State agency, organization,

or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are on any of the Federal-aid highway systems.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 applicable only to natural disasters and catastrophic failures occurring after Dec. 18, 1991, see section 1022(c) of Pub. L. 102-240, set out as a note under section 120 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Section 118(a)(2) of Pub. L. 100-17 provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to natural disasters and catastrophic failures occurring after December 31, 1985.”

Section 118(b)(3) of Pub. L. 100-17 provided that: “The amendments made by paragraphs (1) and (2) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 2, 1987].”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 153(e) of Pub. L. 97-424 provided that: “The amendments made by subsection (d) of this section [amending this section] shall apply to natural disasters or catastrophic failures which the Secretary finds eligible for emergency relief subsequent to the date of enactment of this section [Jan. 6, 1983].”

#### EFFECTIVE DATE OF 1968 AMENDMENT

Section 27(c) of Pub. L. 90-495 provided that: “The amendments made by this section [amending this section and section 120 of this title] shall be applicable to repair or reconstruction with respect to which project agreements have been entered into on or after January 1, 1968.”

#### EFFECTIVE DATE OF 1966 AMENDMENT

Section 9(d) of Pub. L. 89-574 provided that: “The amendments made by this section [amending this section] shall take effect July 1, 1966.”

#### EXPENDITURES MADE PRIOR TO FISCAL YEAR ENDING SEPTEMBER 30, 1978; APPROPRIATION FROM HIGHWAY TRUST FUND

Section 153(b) of Pub. L. 97-424 provided that: “Notwithstanding any other provision of law, all expenditures made under section 125 of title 23, United States Code, prior to the fiscal year ending September 30, 1978, are authorized to have been appropriated from the Highway Trust Fund.”

### § 126. Uniform transferability of Federal-aid highway funds

(a) GENERAL RULE.—Notwithstanding any other provision of law but subject to subsections (b) and (c), if at least 50 percent of a State's apportionment under section 104 or 144 for a fiscal year or at least 50 percent of the funds set-aside under section 133(d) from the State's apportionment under section 104(b)(3) may not be transferred to any other apportionment of the State under section 104 or 144 for such fiscal year, then the State may transfer not to exceed 50 percent of such apportionment or set aside to any other apportionment of such State under section 104 or 144 for such fiscal year.

(b) APPLICATION TO CERTAIN SET-ASIDES.—No funds may be transferred under this section that are subject to the last sentence of section 133(d)(1)<sup>1</sup> or to section 104(f) or to section

<sup>1</sup> See References in Text note below.